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State v. Diaz Respondent's Brief Dckt. 45101

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45101
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-01-2016-34819
)	
ERNESTO DIAZ,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Diaz failed to establish that the district court abused its discretion by declining to place him on probation upon imposing a sentence of one year fixed for possession of methamphetamine?

Diaz Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Diaz pled guilty to possession of methamphetamine and the district court imposed a sentence of one year fixed. (R., pp.32-33, 98-101.) Diaz filed a notice of appeal timely from the judgment of conviction. (R., pp.102-04.)

Diaz asserts that the district court abused its discretion when it ordered his sentence into execution rather than placing him on probation, because he had two jobs and “expressed a willingness to engage in other substance abuse treatment programs, such AA.” (Appellant’s brief, p.4.) Diaz has failed to establish an abuse of discretion.

A trial court's decision regarding whether imprisonment or probation is appropriate is within its discretion. State v. Reber, 138 Idaho 275, 278, 61 P.3d 632, 635 (Ct. App. 2002) (citations omitted); I.C. § 19-2601(4). The goal of probation is to foster the probationer's rehabilitation while protecting public safety. State v. Cheatham, 159 Idaho 856, ___, 367 P.3d 251, 253 (Ct. App. 2016) (citations omitted). A decision to deny probation will not be deemed an abuse of discretion if it is consistent with the criteria articulated in I.C. § 19-2521. Id. (citing State v. Toohill, 103 Idaho 565, 567, 650 P.2d 707, 709 (Ct. App. 1982)). Pursuant to I.C. § 19-2521(1):

The court shall deal with a person who has been convicted of a crime without imposing sentence of imprisonment unless, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, it is of the opinion that imprisonment is appropriate for protection of the public because:

(a) There is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime; or

(b) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or

(c) A lesser sentence will depreciate the seriousness of the defendant's crime; or

(d) Imprisonment will provide appropriate punishment and deterrent to the defendant; or

(e) Imprisonment will provide an appropriate deterrent for other persons in the community; or

(f) The defendant is a multiple offender or professional criminal.

I.C. § 19-2521(1).

The maximum prison sentence for possession of methamphetamine is seven years. I.C. § 37-2732 (c)(1). The district court imposed and executed a one-year fixed sentence, which falls well within the statutory guidelines. (R., pp.98-101.) Diaz has failed to establish an abuse of discretion.

Diaz's criminal record demonstrates his disregard for the law and the well-being of others. Diaz has been convicted of numerous felonies in the state of California, including possession of a controlled substance, evade peace officer, inflict corporal injury on spouse/cohabitant, assault with a deadly weapon, take vehicle without consent, and robbery (enhancement for using a firearm). (PSI, pp.4-8.) Diaz also has misdemeanor convictions in both California and Idaho, and has also served multiple prison sentences. (PSI, pp.4-8.) Pursuant to a plea agreement, the state agreed to a sentence of one year fixed, four years indeterminate, and to recommend probation; however, after the presentence investigation revealed that Diaz had multiple felony convictions, the district court relieved the state of its obligations under the plea agreement. (R., pp.88, 96.)

At sentencing, the state addressed two aggravating factors in this case. The first was that Diaz lied by answering "no" when the district court asked him at the change of plea hearing whether he had any felonies on his record. (5/3/17 Tr. p.2, Ls. 21-24.) The second aggravating factor was Diaz's claim in the PSI that he had not used controlled substances when, in fact, he has four prior felony convictions for possession of a controlled substance in California and pled guilty to possessing methamphetamine in this case. (5/3/17 Tr. p.2, L.25 – p.3, L.2.; PSI, p.11.)

The district court weighed Diaz's prior criminal record and the facts of the case and imposed a reasonable sentence. (5/3/17 Tr., p.8, L.20 – p.9, L.4.) The state submits that Diaz

has failed to establish an abuse of discretion given his lengthy and violent criminal past and his minimization of his drug use.

Conclusion

The state respectfully requests this Court to affirm Diaz's conviction and sentence.

DATED this 30th day of November, 2017.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 30th day of November, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BRIAN R. DICKSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
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Deputy Attorney General